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No. 79-1849

IN THE

Supreme Court of the United States

OCTOBER TERM, 1979

RINGLING BROS.—BARNUM & BAILEY COMBINED SHOWS, INC. and RUTH E. LUTZIC, Suing on Behalf of Herself and All Other Taxpayers Similarly Situated,

Petitioners,

vs.

NEW YORK STATE TAX COMMISSION AND THE CITY OF NEW YORK,

Respondents.

PETITIONERS' REPLY BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

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August 29, 1980

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Neither the New York State Tax Commission nor the City of New York, in their briefs in opposition to Ringling Bros.' petition for a writ of certiorari, respond to the primary issue sought to be raised by petitioners: Whether there was a denial of procedural due process in the actions of the State and City taxing authorities and state courts in granting summary judgment to the State and City on the constitutional claims while denying petitioners discovery or factual hearing on those claims. Instead, the State and City advance several new and untenable grounds for opposing review of their unconstitutional application and enforcement of the admissions tax laws.

I. Respondents State and City tax officials seek to suppress, not answer, Ringling Bros.' Interstate Commerce claim.

Respondent City of New York asserts that Justice Kirschenbaum, who signed the lower state court's final order and judgment, properly refused to permit petitioners to amend their complaint to add a claim under the Commerce Clause of the United States Constitution (art. I, §8, cl. 3), to plead discrimination against interstate commerce in the enforcement of the admissions tax laws. The City asserts that petitioners failed to demonstrate that they had good ground to support their Interstate Commerce claim, advancing two baseless arguments. As shown below, the first argument is factually misleading, and the second reinforces petitioners' claim that this case squarely presents an issue of unconstitutional discrimination against interstate commerce.

Without factual basis, the respondent City contends "The Big Apple Circus" "could hardly be considered in competition with the petitioner Ringling Bros. Circus" and

that the "small, little-known local" nature of "The Big Apple Circus" justified the court below in rejecting petitioners' Interstate Commerce claim.[1]

The City's brief rests on the proceedings in the state courts as showing that the appearance of "The Big Apple Circus" was limited to "a 13-week run in connection with a school for circus performers" which opened in July 1977.[2] In fact, "The Big Apple Circus" continued to perform and appeared in New York City as late as July 27, 1980. Most importantly, after three years of performances in the City and State it continues to enjoy the commercial advantage of not having sales taxes imposed on admissions to its performances.

"The Big Apple's" most recent run received extensive publicity and therefore high commercial visibility. Reviews and articles appeared recently in the *New York Times* and *New York Post* touting "New York's own one-ring extravaganza," and providing the public with detailed information regarding the times, locations and ticket prices of "Big Apple" performances.[3] Far from being the obscure and defunct entity portrayed by respondent City, "The Big Apple Circus" remains an active intrastate enterprise.

The City concedes as a reason for favoring "The Big Apple Circus" over Ringling Bros. Circus that it is "small, little-known [and] local."[4]

As this Court stated in *Boston Stock Exchange v. Tax Commission*, 429 U.S. 318 (1977):

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1. Brief of Respondent City of New York in Opposition to Petition for a Writ of Certiorari, p. 19.

2. *Ibid.*

3. New York Times, July 9, 1980 p. C-14; July 3, 1980, p. C-8 (Addendum, p. C1); New York Post, June 27, 1980, p. 33 (Addendum, p. D1). 1980 Program of "The Big Apple Circus" and ticket stub dated July 27, 1980 (Addendum, p. E1).

4. Footnote 1, *supra.*

> No State may, consistent with the Commerce Clause, impose a tax which discriminates against interstate commerce . . . by providing a direct commercial advantage to local business. 429 U.S. at 329 (quoting *Northwestern States Portland Cement Co. v. Minnesota,* 358 U.S. 450, 458 (1959)).[5]

Even without the discovery which State and City tax officials refused to provide, the record shows that they selectively enforced the admissions tax and discriminated against interstate commerce. The chart below shows the crucial facts of the interstate Ringling Bros.' Circus and its untaxed, state-supported, intrastate competitor, "The Big Apple Circus:"

	RINGLING BROS.—BARNUM & BAILEY CIRCUS	"THE BIG APPLE CIRCUS"
Billing	"The Greatest Show On Earth"	New York's "Own Resident Circus Company"
Sites of Performances	Private and municipal arenas under commercial leases.	Government parks and other government lands apparently without payment of rent
Funding	Entirely private	Public support from New York State and City agencies
State of Incorporation	Delaware	New York
Principal Offices	Washington, D.C.	New York, N.Y.

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5. *Compare Reeves v. State*, 48 U.S.L.W. 4746 (U.S. Sup. Ct. Dkt. No. 79-677, June 19, 1980) (state-owned proprietary enterprises may constitutionally discriminate between resident and non-resident customers) *with Raymond Motor Transportation v. Rice*, 434 U.S. 429 (1978) (State Laws and Regulations may not do so).

	RINGLING BROS.—BARNUM & BAILEY CIRCUS	"THE BIG APPLE CIRCUS"
Places of Performance	Throughout the United States and Canada	New York, N.Y.
Acknowledgement of New York Government Support	None	"The Big Apple Circus'" press releases express "Special Thanks" to the Mayor's Office and New York City agencies.
Name and Logo	No local identification	"THE BIG APPLE CIRCUS"; "The Big Apple" being a symbol of The City of New York.
Imposition of the State and City Admissions Tax	TAXED	UNTAXED

The State and City publicly subsidized the intrastate "Big Apple Circus" and apparently provided it with free sites for its performances and then professed ignorance of its existence as a defense to their discriminatory actions. They claimed that no showing of purposeful intent was made yet denied access to the only direct evidence to support this showing. Most surprisingly, they blithely continued to afford a direct competitive advantage to a local New York enterprise by not collecting the admissions tax on its performances while zealously enforcing the same against the interstate Ringling Bros.' Circus.

The City also suggests that Ringling Bros.' Commerce Clause issue was untimely raised. The facts, however, are otherwise. This action was commenced in 1972, but the cross-motions for summary judgment were not submitted until March, 1977, and were *sub judice* in the New York State Supreme Court until May, 1978. "The Big Apple Circus" did not begin performing until July 1977; the

motion to plead the added Interstate Commerce clause issue was made in February, 1978, prior to any judgment having been entered by that court. The claim thus could not have been more timely.[6]

II. The State's selective enforcement and arbitrary application of the admissions tax present issues under the rational basis, strict scrutiny and compelling state interest tests of the Equal Protection clause, and under the Due Process and Interstate Commerce clauses of the United States Constitution.

Throughout this state-court action, Ringling Bros. documented instance after instance of the State's refusal to enforce the admissions tax as against shows virtually identical to petitioners' Circus in musical, choreographic and dramatic content.[7] As indicated by the chart below, there is no rational basis for the selective enforcement of the tax and its exemptions.

	Ringling Bros.-Barnum & Bailey Circus	The Ice Capades	The Big Apple Circus
Musical Director	Yes	Yes	Yes
Costume Designer	Yes	Yes	Yes
Choreographer	Yes	Yes	Yes
Performance Sites	Arenas and other indoor facilities	Arenas and other indoor facilities	Public parks and other public lands

6. Respondent City of New York also contends that repleading the Interstate Commerce issue was procedurally barred. (City's Brief in Opposition, p. 20.) Justice Kirschenbaum of the State Supreme Court did not deny petitioners' application for leave to amend on grounds of timeliness but did so on the merits, finding no "good ground" for its proposed amendment. Petition at A.18a.

7. Additional instances of non-enforcement of the admissions tax against shows similar in content to petitioner's Circus are discussed in Petition, pp. 8-10, 16-17.

	Ringling Bros.-Barnum & Bailey Circus	The Ice Capades	The Big Apple Circus
Choreographed Musical Performances	Yes	Yes	Yes
Admissions Tax Enforced	YES	NO	NO

There is no rational basis, and the State suggests none, for this disparate treatment of petitioner's Circus and similar artistic performances.

The City of New York, however, would have this Court presume a "rational basis," based on incorrectly cited legislative history. The only discussion of any "rational basis" is contained in the following paragraph from the City's brief:

> However, the record below shows that the reason for this exemption was the financial plight of the legitimate theatre and the fear that a further decline in the number of legitimate theatres would seriously affect hotels, restaurants, taxis, garages and other businesses.[8]

This assertion begs the question. That the exemption may have been initially intended in 1961 to benefit the City's legitimate theatre cannot rationalize the State's arbitrary application of the plain language and underlying purposes of the 1965 State law. As stated recently in *Metromedia, Inc. v. State Tax Commission,* A.D. 2d , N.Y.S.2d (3d Dep't, July 10, 1980):

> [The State Tax Commission's] interpretation of that wording, no matter how broad, could never be per-

8. City's Brief in Opposition, p. 9. The City mistakes this "rational basis" by attributing it to the State Legislature when it passed a statewide sales tax in 1965. In fact, this ostensible rationale was advanced by the Mayor of the City of New York in recommending the prior City sales tax on admissions, which was enacted in 1961. Petition, pp. 8-9 n. 6.

> mitted to override the plain language of the statutory exclusion. If a venture correctly denominated an ice show also qualified as a choreographic or musical performance, the regulation could not provide a basis for taxation (the slip opinion is provided in the Addendum A hereto, p. A1.).

The City's incorrect explanation of statutory intent does not justify the differing application of the tax as among artistic performances not classified as "legitimate theatre" or not performed in theatres, particularly when the state statute expressly exempts motion pictures as well as live dramatic, musical or choreographic performances. Furthermore, the City's and state court's assertions that the arena staging of Ringling Bros.' Circus justifies the tax, because arenas can accommodate more patrons, is meritless. The very shows being treated differently are performed in the same or similar arenas. Therefore, since the State's actions fail to satisfy the "rational basis" test under the Equal Protection clause, *a fortiori* these actions also fail to satisfy the "strict scrutiny" and "compelling state interest" tests applied to statutes taxing speech and interstate commerce. *See* Petition, pp. 5-6, 18-20.

The State's circular argument for denying discovery or a hearing on the constitutional claims because Ringling Bros. supposedly failed to show "willful" or "purposeful" discrimination is demonstrated by the heading of the State Tax Commission Brief, Point II (p. 17). This illogical heading reads:

> POINT II—The petitioners have not demonstrated that there has been an arbitrary and discriminatory application of the tax law and therefore is [*sic*] not entitled to discover tax returns and reports of other taxpayers.

The State and City taxing authorities ask this Court to sanction this "Catch-22." They maintain that petitioners

may have no access to the only evidence on the discriminatory intent of the State taxing authorities until they have first proven what only that evidence can show. *See Herbert v. Lando*, 441 U.S. 153 (1979). They then "bootstrap" their case by arguing further that failure to prove discriminatory intent requires dismissal of the constitutional claims.

Respondents' arguments, endorsed by the state courts, present the issue whether this Court should review the curtailment of Equal Protection, Due Process, First Amendment and Interstate Commerce claims by state courts.

III. The State Tax Commission's regulations display the irrationality of excluding circuses from the admissions tax exemption for artistic performances.

The State and City tax officials seek to avoid their selective enforcement and arbitrary application of the admissions tax laws, by pointing to administrative regulations promulgated in 1976, after this action began.[9]

After petitioners filed the petition in this Court, the Appellate Division of the New York State Supreme Court, Third Department, addressed the issue of the effect of the Commission's regulations on the admissions tax in *Metromedia, Inc. v. State Tax Commission, supra.* In holding the "Ice Capades" ice show exempt under the dramatic and musical arts performances exemption, the court refused to give effect to the State Tax Commission's blanket interpretation of the statutory exemption.

Nevertheless, the State and City persuaded the state courts in this case that a circus categorically cannot qualify under the exemption for artistic performances, regard-

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9. New York Codes, Rules and Regulations tit. 20, vol. B, Part 527, effective September 1, 1976. Section 527.10(d)(2), in relevant part, reads: "Charges for admission to dramatic or musical arts performances are excluded from tax. Dramatic and musical arts performances do not include variety shows, magic shows, circuses, animal acts, ice shows, aquatic shows and similar performances."

less of the overwhelming and detailed proof submitted showing its musical, dramatic and choreographic content. Petitioners challenge the State Tax Commission to show any "rational basis" for this disparate treatment of the Ringling Bros.' Circus and the *Metromedia* ice show, as determined by two New York courts.

We urge that the issue presented by the case is whether state agencies and courts may by subjective and irrational considerations determine the taxability of particular forms of artistic expression, and, through explicit tax exemptions and selective tax enforcement, burden or benefit their exercise. *See Speiser v. Randall*, 357 U.S. 513, 518 (1958)[10]; *Carey v. Brown*, 48 U.S.L.W. 4756, 4757 (U.S. Sup. Ct. Dkt. No. 79-703, June 17, 1980).

The impact of the decision below extends far beyond the specific instance of discrimination against the Ringling Bros.' Circus. It grants state and local government unlimited and arbitrary power to favor or penalize particular forms of legitimate artistic expression, by granting or denying tax exemptions.

CONCLUSION

When artistic performances similar to the Ringling Bros.' Circus were found not to be taxed the State and City argued it was because the other performances were

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10. As Mr. Justice Brennan, writing for the Court, noted: "To deny an exemption to claimants who engage in certain forms of speech is in effect to penalize them for such speech. Its deterrent effect is the same as if the state were to fine them for the speech. The appellees are plainly mistaken in their argument that, because a tax exemption is a 'privilege' or 'bounty,' its denial may not infringe speech." 357 U.S. at 518.

not circuses.[11] When a competing circus was found not to be taxed, they argued that they did not know about it, even though they sponsored it. When numerous other instances of non-enforcement were shown and discovery of the direct evidence bearing on the officials' intent was sought, they refused to give this information. Now they seek to profit by arguing that the resulting failure to prove the wrongful intent justified dismissal of the constitutional claims in their entirety. In so doing, the issue is presented whether the State and City violated Ringling Bros.' rights to Equal Protection of the laws, substantive and procedural Due Process under the Fourteenth Amendment, free speech under the First Amendment, and fair, non-discriminatory treatment under the Commerce Clause of the United States Constitution.

Respectfully submitted,

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August 29, 1980

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11. In oral argument before Mr. Justice Postel in the State Supreme Court, counsel for respondent Tax Commission stated: "I'll respond to the implication that the defendant State Tax Commission has been engaged in selective enforcement of the State Sales tax. To my knowledge, I am unaware of any such illegality. To put this thing in its proper perspective, the plaintiff may be right. If we exempted one circus from the tax and taxed the plaintiffs [*sic*] on its performance, then I would say there might be a question of selective enforcement, but it is not selective enforcement to tax a circus and exempt some other activity which the statute exempts."

ADDENDUM A

SUPREME COURT

Opinion of the Appellate Division

STATE OF NEW YORK
THIRD DEPARTMENT

METROMEDIA, INC., et al.,

Respondents,

–against–

STATE TAX COMMISSION OF
THE STATE OF NEW YORK,

Appellant.

Argued, May 30, 1980.

Before: HON. MICHAEL E. SWEENEY,
Justice Presiding,
HON. T. PAUL KANE,
HON. ELLIS J. STALEY, JR.,
HON. ROBERT G. MAIN,
HON. JOHN T. CASEY,
Associate Justices.

APPEAL from (1) an order of the Supreme Court at Special Term (DeForest C. Pitt, J.), entered January 26, 1979 in Albany County, which granted plaintiffs' motion

for summary judgment, and (2) the judgment entered thereon declaring that charges for admission to shows presented by plaintiff Ice Capades, Inc. are not subject to tax under articles 28 and 29 of the Tax Law.

ROBERT ABRAMS, Attorney General (Michael F. Colligan and Shirley Adelson Siegel of Counsel), for appellant, The Capitol, Albany, New York 12224.

ROBERTS & HOLLAND (Richard A. Levine of counsel), for respondents, 30 Rockefeller Plaza, New York, New York 10020.

OPINION FOR AFFIRMANCE

KANE, J.

Section 1105 (subd. [f], par. [1]) of the Tax Law imposes a sales tax on "[a]ny admission charge * * * except charges for admission to * * * dramatic or musical arts performances * * *". For the purposes of that tax, the term "dramatic or musical arts admission charge" is defined by another provision to mean a "charge paid for admission to a theatre, opera house, concert hall or other hall or place of assembly for a live dramatic, choreographic or musical performance" (Tax Law, §1101, subd. [d], par. [5]). Plaintiff Ice Capades, Inc., a subsidiary of plaintiff Metromedia, Inc., operates three touring companies which present live shows on ice at various facilities, including one owned by plaintiff Madison Square Garden Center, Inc. The central issue raised by this action is whether the admission charge paid by those who attend such entertainments is subject to the foregoing tax.

Counsel to the New York State Department of Taxation and Finance issued a letter in 1965 in which he opined that Ice Capades' presentations constituted live choreographic performances. His successor was of an opposite view and concluded, in January of 1976, that ice shows were predominantly exhibitions of ice skating skills in which the choreographic or musical aspects were subordinate incidentals. The defendant Tax Commission of the State of New York adopted this later opinion and promulgated a regulation, effective September 1, 1976, specifying that "[d]ramatic and musical arts performances do not include variety shows, magic shows, circuses, animal acts, ice shows, aquatic shows and similar performances." (20 NYCRR 527.10 [d] [2]). Plaintiffs' subsequent request to have this blanket regulation modified proved unsuccessful and the instant action for declaratory judgment was thereafter commenced. Special Term granted plaintiffs' motion for summary judgment and declared, *inter alia,* that charges for admission to shows presented by plaintiff Ice Capades, Inc. are not subject to tax under articles 28 and 29 of the Tax Law. We agree with this determination and affirm its judgment.

Although this action closely resembles the procedural sequence developed in *New York State Cable Tel. Assn.* v. *State Tax Comm.* (59 A D 2d 81), the Court of Appeals has since made it plain that taxing authorities are not foreclosed from changing a prior ruling in a prospective manner (*Matter of National Elevator Ind.* v. *New York State Tax Comm.*, 49 N Y 2d 538, 548). Thus, to the extent that Special Term relied on a presumption arising from defendant's shift in position, its decision is no longer grounded on a supportable premise. Nevertheless, the underlying issues remain the same, for it is axiomatic that defendants may not levy a tax beyond what the law allows;

nor may plaintiffs avoid tax liability unless their productions are factually shown to possess the requisite attributes of exclusion.

The questioned regulation is not objectionable on its face merely because there may be some disagreement over the precise meaning of the term "ice shows". Defendant's interpretation of that wording, no matter how broad, could never be permitted to override the plain language of the statutory exclusion. If a venture correctly denominated an ice show also qualified as a choreographic or musical performance, the regulation could not provide a basis for taxation. While plaintiffs did not request a formal declaratory ruling on whether the regulation applied to their productions, they did ask that it be modified in their favor and furnished a description of their activities. Defendant refused to make any alteration and indicated that Ice Capades' performances were subject to the sales tax. Accordingly, it is readily apparent that the present dispute is not so much concerned with the validity of defendant's regulation as it is with plaintiffs' assertion that their specific productions are live choreographic or musical performances.

Plaintiffs' motion for summary judgment was supported by numerous affidavits from individuals connected with the Ice Capades, which fully detail how such performances are developed and produced. In general, they stress the planning involved in coordinating the movement of skaters with musical scores. Several numbers or routines are combined to form the entire performance, yet each rests on a separately designed pattern of skating which is then integrated with music, scenery, costuming and lighting to produce the desired effect. Defendant's opposing affidavit refuses to concede the expertise of plaintiffs' affiants, but

it does not question the accuracy of their representations. The factual portrayal of these entertainments as live choreographic or musical performances stands uncontested and plainly warranted summary relief. Special Term was careful to restrict its declaration to plaintiffs' current performances, and we do not wish to convey the impression that our affirmance precludes any future reassessment of taxability should there be a change in the structure or nature of those performances.

The order and judgment should be affirmed, with costs.

ADDENDUM B

N.Y. Times Article dated
Friday, July 11, 1980
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THE NEW YORK TIMES, FRIDAY, JULY 11, 1980 P. C2

Big Apple Circus Bobs Up at Riis Park

"Young Ladies Who Climb to the Top of the Tent! Young Men Who Slide Down! A Dancing Horse, Trained by One of America's Most Extraordinary Horse Trainers! See Apollo, Wonder Dog, Jump 10 Feet in the Air in the Only Trained Greyhound Act in the United States! Laugh at the Clowns! Quake Before the Only Ferocious South Pakistani Soldier Mole in Captivity and His Dread Master, the Great Zakahr! And Many Many More Surprises!"

The Big Apple Circus has come to town, bobbing up this weekend at Jacob Riis Park in Rockaway, Queens, where it will play through next Tuesday.

It's 8 A.M. Faint stirrings are heard from the three circus trailers parked beside the circus tent. A fluting soprano voice is heard from the trailer marked "Ethel and Her Greyhounds," where Ethel Jennier, her three pet dogs, 10 trained greyhounds and husband, Horst, make their home. A few yards away, where the trailer legend reads "Lady Abigail and Her Dancing Horse," Abigail Allen is easing an electric shaver over the glowing chestnut muzzle of her horse, Sundance, before taking him out for his morning jog and feast of grass — "His pleasure trip before he warms up for the show," Miss Allen explained. Outside the biggest trailer a lacy white costume shirt flutters from a laundry line above a neat pile of plastic toy trucks. Inside, 6-year-old Vlastimir Bertini is eating breakfast with his father and mother, Vlastimil and Helena, and his uncle Sasha, all part of a daredevil Czechoslovak unicycle and balancing act.

Therapist, Juggler and Clown

In the distance a first few bathers and picnickers straggle across the dunes to the nearby beach in a silence broken only by mourning doves and a cheeping baby bird. Back in Manhattan, Big Apple Circus city dwellers are converging on the Golden Donut luncheonette like overgrown and obscurely zany campers. Soon the first car pulls up and performers tumble out. Paul Binder, a Gestalt therapist turned street juggler and "Sesame Street" clown, scans the still sky. "Morning, Benny," he says, addressing a fuzzy dog curled up at the tent flap.

Inside the big tent, the ring crew rakes the sawdust before laying down red carpeting and hurriedly hoists the wood triangles that, slotted together, will form the brightly painted pie of a floor on which the second act takes place. A member of the Back Street Flyers, a fearless team of six black teen-age tumblers and gymnasts trained at the Manhattan-based Big Apple Circus School, straggles by, the laces of his red sneakers trailing in the dust. "Morning, Benny," he, too, calls sleepily.

Michael Christensen, co-founder with Mr. Binder of Big Apple, and Karyn Kinder, its wardrobe mistress, were married in the big tent the night

before, and the circus performers are still feeling the effects of the wedding celebration.

The smaller, gaily striped dressing-room tent is beginning to fill up now. Dale Scott, a clown wire walker, doodles on her flute then rummages around in a tattered shopping cart, securing props for her bag-woman act. Nathalie Enterline, a second generation baton twirler and 1978 world champion, whose innocent air is reminiscent of a young Eleanor Powell, gathers up her gear and wanders out into the fields to zip through her tosses, rolls and spins, batons flashing in the sun.

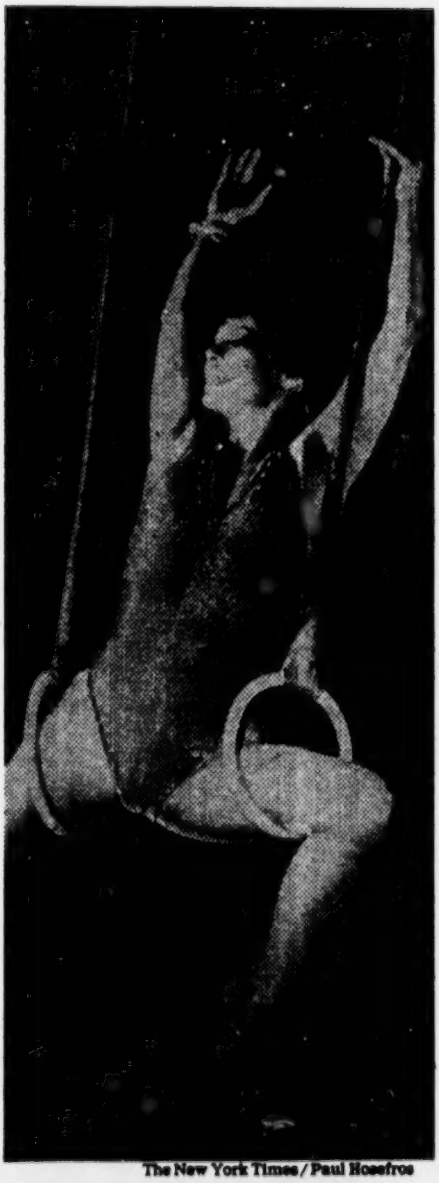
Trained the Cast of 'Barnum'

Across the tent, Mr. Binder and Mr. Christensen ease on their duck's-foot shoes and suspendered pantaloons. Juggling and clowning their way across Europe, the two discovered a mutual interest in the old-style, one-ring circus on which the three-year-old Big Apple is modeled. They have drawn to it a number of refugees from the razzle-dazzle Barnum and Bailey tradition. They have also trained the cast for the Broadway musical "Barnum."

Intimacy is the chief virtue of the one-ring circus. At Big Apple, no one sits farther than 18 feet from the ring. "What does 'small' mean?" Mr. Christensen asked rhetorically. "It means you see the sweat, smell the sawdust and hear the apparatus noises. I guess it's kind of corny, but it means an energetic union of performer and audience."

Mr. Binder nodded in agreement. "You can focus on the craft of the individual performer," he said. "There are very few performers who wouldn't prefer to work a one-ring circus. All the great world circuses have been one-ring, but counting the Big Apple and the Pickle Brothers on the West Coast, there are only about five one-ring circuses in operation in the United States today."

In another corner, Paul Lubera, whose exultant grace on the high trapeze changes to slight sadness on the



The New York Times / Paul Hosefros

Suzanne Perry, the Big Apple Circus's expert on the Spanish Web and airborne Roman Rings, this weekend at Jacob Riis Park in Queens.

ground, daubs on his makeup. There is a burst of calliope music outside. "I love tent shows," Mr. Lubera says. "Except when it gets hot. You're up in the air and heat rises." Suzanne Perry, the Big Apple's sultry expert on the Spanish Web and airborne Roman Rings, drifts by.

Out in the field, the popcorn and cotton-candy machines are given their morning cleaning. Rosalind Rojas flips through a couple of midair somersaults in the big tent. A line has formed at the Heavenly Zephyr, a multicolor circus-wagon box office that looks as if it had been designed by Alexander Calder, Red Grooms and Rube Goldberg. A small boy darts away from his grandfather and tries to wedge himself through the wooden fence surrounding the circus.

Mr. Binder peers through the back flap as the audience files in, scanning it, perhaps, to get an idea which children and adults he may select later to help conduct the circus band. Little Vlasto, a demon peddler on the unicycle, tosses a Frisbee in the fields with a groundsman, unconcerned about his coming act.

Assembling in Their Finery

As if by silent signal, the performers begin to assemble in their circus finery. Miss Jennier is all quivering orange and yellow feathers. Miss Enterline is in blue sequins. Lady Abigail sits astride Sundance in a flowing red gown and black mantilla. A purple cape, spangled with silver, hangs from a tent rope.

Michael Moschen, the ringmaster, checks the seams of a tear-away frock-coat that will later magically transform him into a master juggler. Tisha Tinsman and Suzette Michaud limber up, using a trailer ladder for their barre, as Mr. Bertini, his bluff face uncharacteristically solemn, checks the 30-foot-high poles he will use in the Perch and Due Helena acts.

Benny, small and gray, dashes into the ring but retreats guiltily as the children cheer. "Places! Places, please for the Charivari!" Mr. Moschen calls out. The band strikes up a raucous march, then a fine ironic blast of Dixieland jazz as, one by one, the performers slip through the red velvet curtains and disappear. The Big Apple Circus has begun.

The Big Apple Circus can be seen at Jacob Riis Park today at 4 and 7:30 P.M., tomorrow at 10:30 A.M. and 4 and 7:30 P.M. and Sunday at 1 and 4 P.M. Tickets are $5 and $7.50; $3.50 and $4.25 for children. For information on travel and the circus schedule through July, call 369-5112 or 5113.

ADDENDUM C

N.Y. Times Article dated
July 9, 1980
Page C-14

Circus: The One-Ring Big Apple

N.Y. TIMES, July 9, 1980 p. C-14

By JENNIFER DUNNING

FROM the first toot of the trumpet to the last clown's wave, the Big Apple Circus is fun of a different kind. Founded three years ago in an attempt to revive the old one-ring tradition in New York, this circus has its animal acts and pretty girls, its clowns and aerialists. But the emphasis at Big Apple, seen Friday at Great Kills Park, S.I., is on more than spectacle. Both failures at attempted feats and moments of daring accomplishment are there for the spectator to absorb in intimate surroundings.

The Bertini Family, a Czechoslovak unicycling act, comes closest to both circus traditions. Mother Bertini may ride upended in a split, perched midair between the fast-pedaling Father and Uncle Bertini, or vault on to Father Bertini's shoulders from a teeter board. Baby Bertini may zigzag through a slalom course of bright feathered quills on a unicycle almsot as tall as he. But a kind of charming Gallic insouciance pervades the act, making of it something more than simple circus daredevilry.

•

The Back Street Flyers bring the brash rhythms of the street into the circus tent. Six young men, trained at the Big Apple Circus School, sailed through high multiple flipflops and form a perilous human ladder into the sky, all with nonchalant grins. Suzanne Perry swings lazily through a pair of rings, and then spins with reckless speed at the top of the tent. Nathalie Enterline, a world champion baton twirler, ripples batons through the air and over the contours of her body with easy pizzazz.

Seven greyhounds leap over high barriers with consummate grace, and a small, fuzzy clown dog squeezes under with comic hesitation, all presided over by the giddy little Ethel Jennier and her dour, handsome assistant. And Abigail Allen dreamily guides her horse, Sundance, through a Spanish-flavored dressage number that includes, for the balletgoers in the audience, a pas de cheval or two.

The Big Apple's strongest suit is its intimacy, and the delicate fantasy, inventiveness or personalities that shine through the acts. Dale Scott's bad lady clown skids wistfully along a tightrope, traveling in a battered frying pan. Paul Binder gently plucks a couple of children and an indulgent grandfather out of the audience, one by one, to conduct the circus band, in an act that is living theater.

The audience is as skillfully drawn into a park scene for two clowns, Michael Christensen and Jimmy Tinsman. Mr. Christensen's hilarious play-

Under the Big Top

THE BIG APPLE CIRCUS, directed by Paul Binder; produced by Mr. Binder and Judith Friedlaender; producing clown, Michael Christensen; ringmaster, Michael Moschen; musical director, Rik Albani; lighting designer, Jan Kroeze; principal costume designer, Paul Guzzetta. Presented by the New York School for Circus Arts Inc.

At Jacob Riis Park, Breezy Point, Queens, off Beach Channel Drive, Friday through Tuesday; Floyd Bennett Field, Jamaica Bay, Brooklyn, off Flatbush Avenue, July 19-27.

ing of the Amazing Zakahr, fearless subduer of the death-dealing Southern Pakistani Soldier Mole, had a few timid audience members scrambling from their ringside seats. And Michael Moschen, the dark-eyed and mysterious young Ringmaster, performs a three-ball juggling act that comes close to dance and a fire-juggling number that looks like unadulterated magic.

•

But it is in Paul Lubera's ringtop trapeze act, perhaps, that Big Apple's peculiar mix of poignancy and flamboyance comes most instantanously alive. Mr. Lubera has the look of St.-Exupéry's Little Prince returned, a little gaudy and buffeted by time, who loses that grave look in a heart-stopping, free-floating trip through the upper air.

The witty Big Apple band and fast-moving ring crew are almost a show in themselves. It all will move to Jacob Riis Park in Queens on Friday.

ADDENDUM D

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N.Y. POST June 27, 1980 p. 33

Post Picks

Home-grown circus back in town

THE CIRCUS is coming! New York's own one-ring extravaganza, The Big Apple Circus, is performing this weekend at Great Kills Park, Staten Island.

Comic jugglers, tumblers, trapeze artists and prancing greyhounds are part of the circus, which is conceived in the European tradition of a more intimately-scaled company in which performers are considered artists. Each show runs appromixately two hours, taking place in the Circus' one-ring tent that seats almost 1000 spectators but still allows for an intimate atmosphere.

The circus will also perform at Great Kills Park July 1-6; at Jacob Ellis Park in Queens, July 11-15; and at Floyd Bennett Field in Brooklyn, July 19-27 (except July 21).

Tickets are priced from $3.50 to $4.25 for children and $5 and $7.50 for adults. Today's shows are at 1 and 7:30, tomorrow at 1,4, and 7:30 and Sunday at 1 and 4. For information call 369-5112.

— SUSAN FRIEDLAND

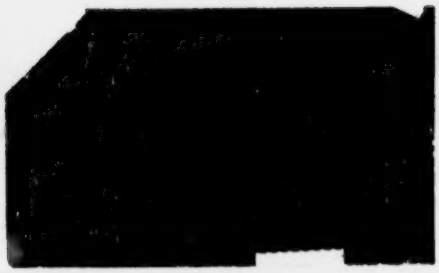
Members of the Big Apple Circus in action.

ADDENDUM E

Program and Ticket
Re: "Big Apple Circus"

The New York School for Circus Arts, Inc.
presents

BIG APPLE CIRCUS



Summer 1980

at GATEWAY NATIONAL RECREATION AREA

Produced by
Paul Binder & Judith Friedlaender

Producing Clown
Michael Christensen

Musical Director
Rik Albani

Ringmaster
Michael Moschen

Lighting Designer
Jan Kroeze

Principal Costumes Designed by Paul Guzzetta

Directed by **Paul Binder**

PROGRAM

CHARIVARI ..... *Entire Company*
BATON SALUTE ..... *Nathalie Enterline*
SPANISH RIDING ..... *Abigail Allen & Sundance*
JUGGLING CLOWNS..... *Paul Binder & Michael Christensen*
POWER ACROBATICS..... *The Back Street Flyers**
THE AMAZING ZAKAHR ..... *Zakahr & Gittha*
HIGH BALANCE PERCH ..... *Due Helenas*

INTERMISSION

CLOWN WIRE WALKING ..... *Dale Scott*
HIGH-JUMPING DOGS ..... *Ethel Jennier & Her Greyhounds*
SPANISH WEB & ROMAN RINGS..... *Suzanne Perry*
JUGGLING & TORCH SWINGING .... *Michael Moschen*
UNICYCLES & TEETERBOARD..... *The Bertini Family***

*The Back Street Flyers: Steven Johnson, Darryl Hamilton, Wayne Jones, Abel Shark, Nathaniel Suares, Andre Valdez III

**With Suzette Michaud & Tisha Tinsman

Company Swing..... Rosalinda Rojas

Program subject to change at the discretion of the Director.

WITH
THE BIG APPLE CIRCUS BAND

Drums .....Joe Ham
Piano .....Linda Rose
Reeds.....Fred Vigdor
Trombone...Curtis Foulkes
Trumpet ....Rik Albani

PRODUCTION BY

William Konkoy—*General Manager*
Robert Libbon—*Production Manager*
Phil Crowder—*Canvas Master & Chief Rigger*

Master Electrician—Gail Dahl
Ring Crew—Rob Libbon, Chief; Phil Beder, Warren Dowdy, Nelson Howe, Grant Phillips
Property Superintendents—Sam Buccio, Jim Wintner
Production Assistant—Nina Lightstone
Assistant Electrician—Wendy Chapin
Follow Spot Operator—Jim Tinsman
Box Office Manager—Erik Haagenson
House Manager—Ruth Kidder
Box Office Staff—Eric Fitzgerald & Scott Holder
Grounds Crew—Joseph Killeen

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For Ticket Information, call (212) 369-5112

BIG APPLE CIRCUS

T-SHIRTS!!!

Enclosed is my check (to the Big Apple Circus) in the amount of $_____.

Please send my order (sizes checked below) to:

Name _____

Street _____

The Big Apple Circus is a professional performing company of the New York School for Circus Arts. We present it to you for your pleasure and for ours, and because we cannot imagine a professional circus school without a living performing circus. Many of the acts of the Summer of 1980 Big Apple Circus show were originally trained in our school, and many of our performers continue to serve on our faculty.

We are the only publicly funded school for circus arts in the United States. We offer classes in a range of circus skills in several different programs. Under the auspices of the ArtsConnection, another non-profit organization, we participate in a program through which we audition children in selected New York City Public Schools and select talented inner-city children for training in acrobatics. In another program of our school, we have recently completed training in circus arts of the entire cast of the Broadway musical "Barnum."

Circus has been called the "theater of aspirations." We have founded our circus here in New York City because it is our home, and because it is the city of aspirations where many people come to realize their dreams. Our dream is to have a permanent performing company based in New York, to tour that company throughout the United States and abroad, and, through it, to introduce Americans to a unique and ancient art form—the one-ring circus. The Big Apple Circus is part of that dream. We dedicate it to New York City, to our aspirations and to yours.

THE NEW YORK SCHOOL FOR CIRCUS ARTS, INC.

Judith Friedlaender ..... *Executive Director*

Paul Binder ..... *Artistic Director*

Alexandre Pavlata ..... *Master Teacher*

William Konkoy &
Ronald B. Monroe ..... *Administration*

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We wish to acknowledge the enormous assistance and cooperation of Gateway National Recreation Area, and specifically to thank:

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The United States Park Police and the many others at Gateway who have helped make our 1980 season possible.

CONTRIBUTORS

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We hope that you like The Big Apple Circus, that it gives you joy, and that it inspires you to make a tax-deductible contribution to our work.

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Donations can be left at the Box Office or mailed to us at P.O. Box 402, New York, New York 10024